

## **REMARKS AND ARGUMENTS**

Reconsideration of the application is respectfully requested in view of this amendment and the following remarks:

This amendment amends claims 33, 38-39, 41, 64 and 69-70; and adds claims 73-77. Claims 33-41, 64-71 and 73-77 are pending in this application. The specification has been amended to correct minor errors and to add, more succinctly, the method steps of newly added claim 74. No new matter has been added.

### **Priority**

A certified copy of the priority foreign application will be filed in due course when obtained by Applicant.

### **Claim Rejections – 35 U.S.C. §112**

The Examiner rejected claims 38, 39, 41, 69 and 70 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The aforementioned claims have been amended to overcome this rejection. Claim 73 has been added, in addition to the amendment of claim 41, in order to overcome the rejection of claim 41.

### **Claim Rejections – 35 U.S.C. §103**

The Examiner rejected claims 33-37, 40, 64-68 and 71 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,853,121 to Mizrachy et al. in view of Pickup et al. (“The effect of cycloid vibration on leg blood flow and ulcer pain,” July 1978) and Lievens (“The Use of Cycloidal Vibrations Therapy on the Blood and Lymphcirculation and on Wound Healing,” 1979).

The Applicant respectfully disagrees with the Examiner’s assertion that Mizrachy discloses a method of using the Mizrachy device for treatment of ulcers and lymphoedema by increasing circulation of the blood. Mizrachy’s patent is directed to the prevention of venous thrombosis in operative and post-operative patients (col. 1, lines 3-8). There is no mention or suggestion of Mizrachy’s use to treat ulcers and/or

lymphoedema. There is no evidence that patients who might wish to reduce the risk of venous thrombosis are even likely to suffer from ulcers and/or lymphoedema; therefore, there is no inherent teaching of a link between venous thrombosis and ulcers and lymphoedema in Mizrachy. For at least these reasons, without some recognition that the Mizrachy device does treat ulcers and/or lymphoedema, which does not exist as the Mizrachy device alone is insufficient to treat either, there is no motivation to attempt to improve the device to provide that type of treatment by employing the teachings of Pickup and/or Lievens. If the Examiner disagrees then the Applicant respectfully requests that the Examiner explicitly direct us to the location where such evidence is located that states that the Mizrachy device may be employed to heal ulcers and/or treat lymphoedema.

Further, though Mizrachy does briefly and singularly mention that vibration is thought to be useful in both stimulating muscle activity and as a direct means of stimulating circulation in the blood, Mizrachy only teaches a method of increasing circulation by placing the leg in an inclined position with the use of a tapered cushion (col. 2, lines 28-31 and col. 4, lines 63-65). As stated in Applicant's specification, improved blood circulation may cause a beneficial effect. Applicant has not asserted, and such assertion is not present in the prior art, that an improvement in blood circulation through any means alone would treat ulcers and/or lymphoedema (page 7, lines 19-22). Mizrachy's disclosure does not teach Applicant's method of treating ulcers and/or lymphoedema.

The Examiner has stated that Mizrachy discloses the limitation contained within Applicant's claims 33 and 64 pertaining to application of the cycloidal mechanical vibrations for an effective period of time in order to heal and/or treat ulcers and/or lymphoedema. Applicant respectfully disagrees with this assertion. In fact, no period of time for healing or treating is disclosed at all as the Mizrachy patent is directed to the prevention of venous thrombosis and not the treatment or healing of same.

The Examiner has stated that Mizrachy teaches a method that comprises the step of subjecting the body in the area of the ulcer or lymphoedema to mechanical vibrations. The Applicant respectfully disagrees. Mizrachy simply teaches applying vibrations to the leg area in general as a preventative measure for venous thrombosis, not subjecting the

body in the area of the ulcer or lymphoedema to cycloidal mechanical vibrations for an effective period of time in order to treat the condition. While the Mizrachy method, as disclosed, may inadvertently result in vibrating the affected area, this limitation, as claimed, i.e., subjecting the area to mechanical vibrations as a method of healing ulcers and of relieving the symptoms of lymphoedema by reducing swelling, is not taught therein.

Independent claims 33 and 64 have been amended to limit the method to the healing of ulcers and of relieving the symptoms of lymphoedema by reducing swelling. Support for this amendment in relation to ulcers may be found at page 7, line 16 through page 8, line 12. Support for the amendment in relation to lymphoedema is encompassed in the original “treatment” language of originally filed claims 33 and 64 as to treat lymphoedema would inherently encompass relieving the symptoms thereof.

Mizrachy does not disclose a method of treatment. A “method of treatment” is inherently a method of curing or healing or, at the very least, of relieving some symptoms of the condition in question. Mizrachy teaches a preventative method used to prevent the onset of venous thrombosis. These methods are fundamentally different as to prevent the onset of a condition does not require the same level of intervention as actually treating a condition. Finally, a preventative treatment for a particular condition does not contain an inherent cure or treatment for a separate and distinct condition.

Dependent claims 34-41 and 73 depend directly from, and contain all the limitations of claim 33 as amended. Therefore, dependent claims 34-41 and 73 are also patentably distinct from the cited references for the reasons stated above with respect to claim 33.

Dependent claims 63-71 depend directly from, and contain all the limitations of claim 64 as amended. Therefore, dependent claims 63-71 are also patentably distinct from the cited references for the reasons stated above with respect to claim 64.

#### New Claims 74-77

Claim 74 has been added to encompass the treatment of deep vein thrombosis with the limitation, among others, of an RMS acceleration in the axial direction of the

tibial or fibulal bone of between 5 and 15 ms<sup>-2</sup>, and in the radial place with respect to the tibial or fibulal bone with an RMS acceleration of between 2 and 5 ms<sup>-2</sup>.

Claims 75-77 depend from claim 74 and have further limitations added thereto. Support for these additions may be found in the original claims as filed as well as in the specification at page 4, line 17 through page 5, line 18 and page 7, lines 6-15.

Conclusion

Applicant has made an earnest attempt to place this application in condition for allowance. For at least the reasons stated above, and for other reasons clearly apparent, Applicant respectfully requests full allowance of the claims as amended, or, where no amendment is offered, as previously or newly presented. Reconsideration of this application in view of this amendment and response is therefore respectfully requested.

Applicant respectfully requests an opportunity to discuss this application with the Examiner upon review of this response in order to discuss the issues presented.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 11-0307

Respectfully submitted,

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